In The

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-795

JAMES CISSELL, Trustee,

Petitioner,

v.

AMERICAN HOME ASSURANCE CO.,

Respondent.

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY

Respondent, American Home Assurance Co., contends in its Brief in Opposition to Petition for Writ of Certiorari that the Sixth Circuit Court of Appeals did not rule that the Petitioner Trustee lacked standing to bring a declaratory judgment action.

The decision of the District Court was a declaration of the rights and obligations of the parties under the contract of insurance between Petitioner and Respondent, as was requested in the complaint filed by Petitioner Trustee. In the appeal to the United States Court of Appeals for the Sixth Circuit, the Petitioner Trustee sought review

of that portion of the declaratory judgment (consisting of five parts) labeled part 2, and directed towards whether the acts designated by Petitioner Trustee constituted negligent acts, errors or omissions. There was no need to ask the Court of Appeals for any relief regarding a *failure* to grant a declaratory judgment. It had been granted. Not only did the District Court grant a declaratory judgment as requested, but it stated in part 3 of its conclusion:

> "It is the conclusion of this Court, and may be so incorporated in a declaratory judgment, that, under the peculiar facts in this record the language of this policy, the allowance of a claim by the bankruptcy judge is the equivalent of a judgment within the policy term, and that upon the allowance of the various student claims and to the extent thereof, the trustee has standing to assert a claim under the policy." (at 30a of Appendix "A" to Petition for Writ of Certiorari.)

Respondent, American Home Assurance Co., argued on appeal that the Petitioner Trustee did not have standing to bring an action for damages against Respondent, but no mention was made of lack of standing to bring the declaratory judgment action. Petitioner Trustee replied to Respondent's argument in its reply brief, but did not argue the question of standing to bring the declaratory judgment action, as there was no need to do so. The District Court had granted a declaratory judgment without questioning the standing of the Petitioner. The American Home Assurance Co. had not questioned Petitioner Trustee's standing to bring a declaratory judgment action. The Court of Appeal's decision to remand to the District Court for entry of a judgment dismissing Petitioner's complaint is, therefore, in error.

In light of the foregoing, we fail to understand Respondent's first argument opposing review.

Respondent's second argument is adequately answered in the Petition for Writ of Certiorari.

Lastly, had the Court of Appeals wished to simply "advise" the Petitioner Trustee (as the Respondent maintains in its Brief in Opposition, p. 6) that there was no coverage under the policy, it would have been simple enough to merely uphold the decision of the District Court, instead of extinguishing an existing declaratory judgment by remanding for an entry of dismissal of Petitioner's complaint.

Respectfully submitted,

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